



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Moisture Protection Construction, Inc.

File: B-236712

Date: September 6, 1989

DIGEST

A hand-carried proposal delivered 5 minutes late may not be accepted since protester failed to allow sufficient time to timely deliver its proposal and this was the sole cause of the proposal being late.

DECISION

Moisture Protection Construction, Inc. (MPCI), protests the award of any contract under request for proposals (RFP) No. 00-89-R-62, issued by the Department of Agriculture (USDA) for building operations and maintenance for the USDA complex. We dismiss the protest without obtaining an agency report since it is clear from the record that the protest is without legal merit. 4 C.F.R. § 21.3(m) (1988).

The time for receipt of proposals was scheduled for 10 a.m. on August 11, 1989, at the USDA Office of Operations, Procurement Division. MPCI contends that its hand-carried proposal initially was received at the USDA at 9:40 a.m. on August 11. At that time, however, the protester states it realized that only part of its proposal had been delivered and that a portion of its proposal was missing. The remaining portion of MPCI's proposal was not received at the USDA until 10:05 a.m., 5 minutes after the deadline. Although the contracting officer took possession of the completed proposal and issued MPCI a receipt, he refused to consider it for award on the ground that it was late.

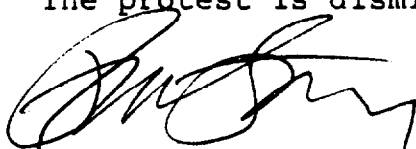
On August 18, MPCI filed an agency-level protest requesting that its proposal be considered for award. By a letter of that same day the agency denied MPCI's protest. MPCI then filed a protest in our Office on August 25, requesting that we rule that USDA should accept and consider the proposal submitted by MPCI.

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The protester objects to the rejection of its proposal as late, contending that to do so in the context of a negotiated procurement prejudices only the protester and no one else, since proposals are not publicly opened and the evaluation and award process had not even commenced as of when it completed the delivery of its proposal.

Nevertheless we have held that as a general rule it is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and the late delivery of a proposal requires its rejection. Vikonics, Inc., B-222423, Apr. 29, 1986, 86-1 CPD ¶ 419. There are limited exceptions to this rule. A late hand-carried proposal may be considered only where the paramount cause of the late receipt is improper action of the government and where consideration of the late proposal would not compromise the integrity of the competitive system. Id. In these cases, there must be affirmative government action that makes timely delivery of the hand-carried proposal impossible. Here, we find the sole cause for the late proposal was MPCCI representative's failure to bring the entire proposal with him when he first submitted it at 9:40 a.m. Since the government in no way interfered with timely submission of the proposal, we find that the USDA properly rejected MPCCI's proposal as late.

The protest is dismissed.



Robert M. Strong
Associate General Counsel